

UNITED STATES DISTRICT COURT

for the

Western District of New York

22 CV 0720
JLS

DARRIN SHIVERS

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

JOHN BARCIA

DR. KENNETH MCGEE

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

Case No.

(to be filled in by the Clerk's Office)

JURY TRIAL: Yes ☒ No ☐

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS
(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

DARRIN SHIVERS

All other names by which
you have been known:

ID Number

4114 ECN #

Current Institution

E.C.C.F

Address

11581 WALDAN AVE

ALBANY

NY

14004

City

State

Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

JOHN GARCIA

Job or Title (*if known*)

ERIE COUNTY SHERIFF'S

Shield Number

Employer

ERIE COUNTY

Address

10 DELAWARE AVE

BUFFALO

NY

14202

City

State

Zip Code

☐

Individual capacity

☒

Official capacity

Defendant No. 2

Name

KERNETH MCGEE

Job or Title (*if known*)

CHIEF MEDICAL OFFICER ECHC/ECCF

Shield Number

Employer

ERIE COUNTY SHERIFF'S / ERIE COUNTY DEP-

Address

-OF HEALTH

10 DELAWARE AVE

BUFFALO

NY

14202

City

State

Zip Code

☐

Individual capacity

☒

Official capacity

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

Defendant No. 3

Name _____

Job or Title (if known) _____

Shield Number _____

Employer _____

Address _____

City _____

State _____

Zip Code _____

☐ Individual capacity ☐ Official capacity

Defendant No. 4

Name _____

Job or Title (if known) _____

Shield Number _____

Employer _____

Address _____

City _____

State _____

Zip Code _____

☐ Individual capacity ☐ Official capacity**II. Basis for Jurisdiction**

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☐ Federal officials (a *Bivens* claim)☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

FIFTH 8TH AMENDMENT CRUEL AND USUAL PUNISHMENT

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

DR K. MCGEE ACTED UNDER, COMMUNITY STANDARDS AND
ERIE COUNTY DEPARTMENT OF HEALTH DIVISION OF PUBLIC AND
CORRECTIONAL HEALTH POLICIES AND PROCEDURE.

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

☐

Pretrial detainee

☐

Civilly committed detainee

☐

Immigration detainee

☐

Convicted and sentenced state prisoner

☐

Convicted and sentenced federal prisoner

☒

Other (explain)

ERIE COUNTY CORRECTIONAL FACILITY ~~ERIE~~ AWAITING TRIAL.

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

ERIE COUNTY CORRECTIONAL FACILITY APRIL 20, 2022

ATTACH PAGE #1

ON 3/19/22, I WAS ARRESTED BY THE BUFFALO POLICE WITH A BROKEN ANKLE. I WAS TAKEN TO THE ER AT E.C.M.C. AND WAS SEEN BY AN ORTHOPEDIC SURGEON AND WAS INFORMED THAT I WOULD NEED SURGERY TO FIX RIGHT ANKLE. A APPOINTMENT WAS MADE AT THAT TIME.

ON 3/20/22 I WAS TAKEN INTO SHERIFFS CUSTODY, AND WAS TOLD BY THE MEDICAL STAFF THAT I HAVE A APPOINTMENT WITH THE ORTHOPEDIC CLINIC AT E.C.M.C..

ON 4/11/22 I WAS TAKEN TO MY APPOINTMENT AT THE ORTHOPEDIC CLINIC AT E.C.M.C. AND WAS SEEN BY DR RITTER, AND WAS INFORMED THAT A CATSCAN AND SURGERY PLANNING WAS NEEDED TO STOP PAIN IN RIGHT ANKLE.

ON JUNE 17, 2022, I PUT IN A SICK CALL REQUEST TO SEE WHY I HAVEN'T HAD THE CATSCAN OR SURGERY YET. I THEN WAS INFORMED BY THE MEDICAL STAFF THAT THE [CMO] DR. MCGEE DID NOT APPROVE

CATSCAN OR SURGERY, LEAVING ME TO WAIT ON A BROKEN ANKLE, WITH NO SUPPORT, WHICH HAS CAUSE PAIN AND MORE DAMAGE TO UPPER RIGHT LEG, WITH PAIN REMAINING UP MY LEG.

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

- C. What date and approximate time did the events giving rise to your claim(s) occur?

~~06/17/22~~ 6/17/22 4:00 PM SICK CALL ~~901~~

- D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

SEE ATTACH PAGE #1

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

RIGHT ANKLE HAS BECOME FARTHER DAMAGE, AND DEFORM;
WITH PAIN NO LONGER JUST RIGHT ANKLE BUT MOVING
UP RIGHT LEG, VERY HARD TO WALK.

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

I'M ASKING THE COURT FOR A INSTRUCTION TO HAVE DEFENDANT
GIVE PLAINTIFF IMMEDIATE SURGERY, TO STOP FARTHER DAMAGE, AND
TO STOP PAIN; ALSO SIX HUNDRED THOUSAND FOR PAIN AND
SUFFERING, SIX HUNDRED THOUSAND FOR PUNITIVE DAMAGES/~~AND~~
PUNISHMENT.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

- A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

ERIE COUNTY CORRECTIONAL FACILITY

- B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

- C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☒ Yes

☐ No

☐ Do not know

If yes, which claim(s)?

CORRECTIONAL HEALTH

- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☒ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☒ No

- E. If you did file a grievance:

1. Where did you file the grievance?

ERIE COUNTY CORRECTIONAL FACILITY

2. What did you claim in your grievance? THAT I WAS TOLD BY THE ORTHOPEDIC DR, THAT I NEEDED SURGERY; THE ACTION I REQUEST I WOULD LIKE TO HAVE THE SURGERY TO STOP THE PAIN.

3. What was the result, if any? GRIEVANCE WAS DENIED ON MERITS; APPEAL 6/22/2022, APPEAL DENIED AGAIN, WAS THEN SENT TO COMMISSION OF CORRECTION, CITIZEN POLICY COMPLAINT REVIEW COUNCIL ON 7/5/2022.

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.) COMMISSION HAS 45 DAY TO RENDER A DECISION IN 45 DAYS AND HAS NOT ANSWER. DENIED.

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The “three strikes rule” bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has “on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this “three strikes rule”?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court (if federal court, name the district; if state court, name the county and State)

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition. _____

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing:

9/19/22

Signature of Plaintiff

[Handwritten Signature]

Printed Name of Plaintiff

DARRIN SHIVERS

Prison Identification #

414

Prison Address

E.C.C.F 11581 WALDAN AVE

BUFFALO

City

NY

State

14004

Zip Code

B. For Attorneys

Date of signing:

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address

Print

Save As...

Add Attachment

Page 10 of 11

Reset



Commission of
Correction

ALLEN RILEY
Chairman

THOMAS J. LOUGHREN
Commissioner

YOLANDA CANTY
Commissioner

September 8, 2022

Sheriff John Garcia
Erie County Sheriff's Office
10 Delaware Avenue
Buffalo, New York 14202

Re: Grievance #164139 - Facility #22G-350 Grievant Darrin Shivers

Dear Sheriff Garcia:

On this date, the Citizen's Policy and Complaint Review Council reviewed the above-referenced grievance and voted to deny the grievance. The Council sustains the action taken by the facility administration.

Sincerely,

A handwritten signature in black ink, appearing to be "Y. Canty".

Yolanda Canty
Commissioner

cc: Jail Administrator
Grievance Coordinator
Darrin Shivers



ALLEN RILEY
Chairman

THOMAS J. LOUGHREN
Commissioner

YOLANDA CANTY
Commissioner

September 8, 2022

Sheriff John Garcia
Erie County Sheriff's Office
10 Delaware Avenue
Buffalo, New York 14202

Re: Grievance #164139 - Facility #22G-350 Grievant Darrin Shivers

Dear Sheriff Garcia:

On this date, the Citizen's Policy and Complaint Review Council reviewed the above-referenced grievance and voted to deny the grievance. The Council sustains the action taken by the facility administration.

Sincerely,

A handwritten signature in black ink, appearing to be "Y. Canty".

Yolanda Canty
Commissioner

cc: Jail Administrator
Grievance Coordinator
Darrin Shivers

DANN SHIVERS # 414
11581 WALDEN AVE
ALDEN NEW YORK # 14004

7



TO: UNITED STATE DISTRICT COURT
FOR THE WESTERN DIVISION OF
NEW YORK OFFICE OF THE CLERK
304 UNITED STATES COURTHOUSE
68 COURT ST
BUFFALO NY 14202



USPS
ZIP 14202
02 NY
000516